

22 October 2008

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Your Ref: 133147

Examiner's first report on patent application no. 2007202203
by Cochlear Limited

Last proposed amendment no.

Dear Madam/Sir,

I am replying to the request for normal examination. I have examined the application and I believe that there are lawful grounds of objection to the application. These grounds of objection are:

1. The invention defined in claim 1 is not novel when compared with the following prior art document:

WO 1999/00067 A (University of Iowa Research Foundation)
7 January 1999

This document discloses an apparatus having a plurality of stimulation electrodes and a means for introducing drugs into the hypothalamus. As such it discloses all of the features of the claimed invention.

2. The invention claimed in claim 1-5, 17, 30 and 35 does not involve an inventive step in the light of the following documents when combined:

D1: US 5653742 (Parker et al)
August 5 1997

D2: US 4351337 (Sidman)
September 1982

D1 discloses a cochlear assembly device, said device having at least two configurations: an insertion and a deployed configuration. A stiffening member is present to facilitate insertion, said member made from a bio-resorbable material. Thus the claimed invention is distinguished from D1 in that it has a bioactive substance delivery means.

D2 discloses an implantable drug delivery device whereby the drug is released through diffusion and/or biodegradation (see abstract) for a predetermined period of time (inherent in



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the teaching). Although the use of a steroid is not disclosed in the citation, its utility is well known and understood.

Furthermore, D2 teaches an implant device made from a biocompatible material. Although not taught by Sidman, silicone and polyurethane are well known in the art. At the time of invention a person of ordinary skill in the art would have found it obvious to use these materials for their biocompatible properties.

As both documents are from the same field, namely implantable medical devices, it would have been obvious to the person skilled in the art to combine the teachings of these documents to arrive at the claimed invention.

3. The invention defined in claims 1, 2, and 21 to 23 does not involve an inventive step when compared with the state of the common general knowledge in the art.

The added feature of a lubricious coating on at least a portion of the exterior is well known in the art and therefore does not involve an inventive step. It would be obvious for the person skilled in the art to coat the implantation device with a friction-reducing substance to ease insertion. It would also be self-evident to one having ordinary skill to impregnate the lubricious material with a bioactive substance.

The person skilled in the art would directly and without difficulty, by routine steps, arrive at a solution which is the same as the claimed solution, and therefore the invention as claimed lacks an inventive step.

NOTE: There is a current postponement of acceptance in place. If you overcome all other objections before the expiration of that postponement, the Commissioner will only accept the application at that time if you have filed a clear and unambiguous statement requesting the withdrawal of that postponement. Otherwise, a further adverse report will be issued.

You have 21 months from the date of this report to overcome all my objection(s) otherwise your application will lapse.

You will need to pay a monthly fee for any response you file after 12 months from the date of the first report.

You will also need to pay any annual continuation fees that apply. These will normally be first due five years from the filing date. Please note however that earlier commencement dates apply for divisional applications.

Information about fees may be obtained by phoning 1300 651 010.

Yours faithfully,



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